

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

THE M/V “LOUISA” CASE
(SAINT VINCENT AND THE GRENADINES *v.* KINGDOM OF SPAIN)
List of cases: No. 18

JUDGMENT OF 28 MAY 2013

2013

TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU NAVIRE « LOUISA »
(SAINT-VINCENT-ET-LES GRENADINES *c.* ROYAUME D'ESPAGNE)
Rôle des affaires : No. 18

ARRÊT DU 28 MAI 2013

Official citation:

*M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain),
Judgment, ITLOS Reports 2013, p. 4*

Mode officiel de citation :

*Navire « Louisa » (Saint-Vincent-et-les Grenadines c. Royaume d'Espagne),
arrêt, TIDM Recueil 2013, p. 4*

28 MAY 2013
JUDGMENT

THE M/V “LOUISA” CASE
(SAINT VINCENT AND THE GRENADINES *v.* KINGDOM OF SPAIN)

AFFAIRE DU NAVIRE « LOUISA »
(SAINT-VINCENT-ET-LES GRENADINES *c.* ROYAUME D’ESPAGNE)

28 MAI 2013
ARRÊT

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



YEAR 2013

28 May 2013

List of cases:

No. 18

**THE M/V “LOUISA” CASE
(SAINT VINCENT AND THE GRENADINES *v.* KINGDOM OF SPAIN)**

JUDGMENT

TABLE OF CONTENTS

I.	Introduction	8-17
II.	Submissions of the Parties	17-21
III.	Factual background	22-27
IV.	Jurisdiction	28-46
	Scope of the declarations	29-32
	<i>Prima facie</i> jurisdiction and jurisdiction on the merits	32-33
	Subject and existence of the dispute	33-46
V.	Costs	46-47
VI.	Operative provisions	47-48

Present: President YANAI; Vice-President HOFFMANN; Judges MAROTTA RANGEL, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, NDIAYE, JESUS, COT, LUCKY, PAWLAK, TÜRK, KATEKA, GAO, BOUGUETAIA, GOLITSYN, PAIK, KELLY, ATTARD, KULYK; *Registrar* GAUTIER.

In the M/V “LOUISA” case

between

Saint Vincent and the Grenadines,

represented by

Mr G. Grahame Bollers, Esq., Kingstown, Saint Vincent and the Grenadines,

as Agent;

Ms Rochelle A. Forde, Esq., Kingstown, Saint Vincent and the Grenadines,

Mr S. Cass Weiland, Esq., Patton Boggs LLP, Dallas, Texas, United States of America,

as Co-Agents, Counsel and Advocates;

and

Mr Robert A. Hawkins, Esq., Patton Boggs LLP, Dallas, Texas, United States of America,

Mr William H. Weiland, Esq., Houston, Texas, United States of America,

as Counsel and Advocates;

Mr Myron H. Nordquist, Esq., Center for Oceans Law and Policy, University of Virginia, School of Law, Charlottesville, Virginia, United States of America,

as Advocate;

Mr Christopher Hasche, Esq., Fleet Hamburg LLP, Hamburg, Germany,

Ms Dharshini Bandara, Esq., Fleet Hamburg LLP, Hamburg, Germany,

as Counsel,

and

the Kingdom of Spain,

represented by

Ms Concepción Escobar Hernández, Professor, International Law Department, National Distance Education University, Spain, Member of the International Law Commission,

as Agent, Counsel and Advocate;

and

Mr José Martín y Pérez de Nanclares, Head of the International Law Division, Ministry of Foreign Affairs and Cooperation, Professor, International Law Department, University of Salamanca, Spain,

Mr Mariano J. Aznar Gómez, Professor, International Law Department, University “Jaume I”, Castellón, Spain,

Mr Carlos Jiménez Piernas, Professor, International Law Department, University of Alcalá de Henares, Spain,

as Counsel and Advocates;

Ms María del Rosario Ojinaga Ruiz, Associate Professor, International Law Department, University of Cantabria, Spain,

Mr José Lorenzo Outón, Adviser, Ministry of Foreign Affairs and Cooperation, Spain,

as Counsel;

Mr Diego Vázquez Teijeira, Adviser, Directorate-General of Energy and Mining Policy, Ministry of Industry, Energy and Tourism, Spain,

as Adviser,

THE TRIBUNAL,

composed as above,

after deliberation,

delivers the following Judgment:

I. INTRODUCTION

1. By letter dated 23 November 2010, received electronically by the Registrar of the Tribunal on 24 November 2010, Saint Vincent and the Grenadines filed an Application instituting proceedings against the Kingdom of Spain (hereinafter “Spain”), in accordance with article 54 of the Rules of the Tribunal (hereinafter “the Rules”), in a dispute concerning the detention of the M/V “Louisa”. By the same letter, Saint Vincent and the Grenadines submitted a Request for the prescription of provisional measures (hereinafter “the Request”) under article 290, paragraph 1, of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”). Certified copies of the Application and the Request were sent on 24 November 2010 by the Registrar to the Minister of Foreign Affairs and Cooperation of Spain, and also to the Ambassador of Spain to Germany. The originals of the Application and the Request were received by the Registrar on 9 December 2010.

2. In its Application, Saint Vincent and the Grenadines invoked, as the basis for the jurisdiction of the Tribunal, the declarations made by the Parties in accordance with article 287 of the Convention.

3. In its Application, Saint Vincent and the Grenadines requested that the Application and the Request be referred to the Chamber of Summary Procedure of the Tribunal, pursuant to article 15, paragraph 3, of the Statute of the Tribunal (hereinafter “the Statute”). By note verbale dated 24 November 2010, the Registrar invited the Government of Spain to communicate its position on the said request at its earliest convenience, but not later than 26 November 2010. By communication dated 26 November 2010, the Agent of Spain informed the Tribunal that Spain did not agree with the request of Saint Vincent and the Grenadines and invited the Tribunal to hear and determine the case pursuant to article 13, paragraph 3, of the Statute.

4. The case was entered in the List of cases as Case No. 18 on 24 November 2010.
5. By letter dated 15 October 2010 addressed to the Registrar, the Attorney-General of Saint Vincent and the Grenadines notified the Registrar that Mr G. Grahame Bollers had been authorized as Agent, and Ms Rochelle A. Forde and Mr S. Cass Weiland as Co-Agents,

to make an Application and Request for Provisional Measures on behalf of Saint Vincent and the Grenadines, before the International Tribunal for the Law of the Sea against the Kingdom of Spain, in relation to the detention of the vessel *M.V. Louisa* and its tender, flying the flag of Saint Vincent and the Grenadines.

6. By letter dated 25 November 2010, the Minister of Foreign Affairs and Cooperation of Spain notified the Registrar of the appointment of Ms Concepción Escobar Hernández, the Legal Adviser of the Ministry of Foreign Affairs and Cooperation, as Agent of Spain.
7. In accordance with article 24, paragraph 3, of the Statute, the States Parties to the Convention were notified of the Application and the Request by a note verbale from the Registrar dated 24 November 2010.
8. Pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, the Secretary-General of the United Nations was notified, by letter from the Registrar dated 26 November 2010, of the Application and the Request.
9. On 23 December 2010, the Tribunal delivered its Order on the Request. In the said Order, the Tribunal decided as follows:

1. By 17 votes to 4,
Finds that the circumstances, as they now present themselves to the Tribunal, are not such as to require the exercise of its powers to prescribe provisional measures under article 290, paragraph 1, of the Convention;
[...]

2. By 17 votes to 4,
Reserves for consideration in its final decision the submissions made by both parties for costs in the present proceedings;
[...]

10. A copy of the Order was transmitted to each Party on 23 December 2010. By letter dated 7 January 2011, a copy of the Order was also transmitted to the Secretary-General of the United Nations.

11. In accordance with article 45 of the Rules, on 11 January 2011, the President of the Tribunal held telephone consultations with the Parties to ascertain their views with regard to questions of procedure in respect of the case.

12. In accordance with article 59 of the Rules, the President, having ascertained the views of the Parties, by Order dated 12 January 2011, fixed the following time-limits for the filing of pleadings in the case: 11 May 2011 for the Memorial of Saint Vincent and the Grenadines, and 11 October 2011 for the Counter-Memorial of Spain. On 12 January 2011, the Registrar transmitted a copy of the Order to each Party.

13. By letter dated 11 April 2011, the Co-Agent of Saint Vincent and the Grenadines requested an extension of the time-limit fixed for the submission of the Memorial of Saint Vincent and the Grenadines. The President, having ascertained the views of the Parties, by Order dated 28 April 2011, extended the time-limit for the submission of the Memorial of Saint Vincent and the Grenadines to 10 June 2011, and the time-limit for the submission of the Counter-Memorial of Spain to 10 November 2011. On 29 April 2011, the Registrar transmitted a copy of the Order to each Party.

14. The Memorial of Saint Vincent and the Grenadines was duly filed on 10 June 2011.

15. Pursuant to article 60 of the Rules, the Tribunal, taking into account the agreement reached during consultations held by the President with the Parties on 11 January 2011, by Order dated 30 September 2011, authorized the submission of a Reply by Saint Vincent and the Grenadines and a Rejoinder by Spain, and fixed the following time-limits for the filing of those pleadings in the case: 11 December 2011 for the Reply of Saint Vincent and the Grenadines, and 11 February 2012 for the Rejoinder of Spain. On 1 October 2011, the Registrar transmitted a copy of the Order to each Party.

16. By letter dated 4 October 2011, the Agent of Spain requested an extension of the time-limit fixed for the submission of the Counter-Memorial of Spain. The President, having ascertained the views of the Parties, by Order dated 4 November 2011, extended as follows the time-limits for the submission of the Counter-Memorial and the subsequent written pleadings in the case: 12 December 2011 for

the Counter-Memorial of Spain, 10 February 2012 for the Reply of Saint Vincent and the Grenadines, and 10 April 2012 for the Rejoinder of Spain. On 4 November 2011, a copy of the Order was transmitted by the Registrar to each Party.

17. The Counter-Memorial of Spain was duly filed on 12 December 2011. The Reply of Saint Vincent and the Grenadines was duly filed on 10 February 2012. The Rejoinder of Spain was duly filed on 10 April 2012.

18. During consultations with the Co-Agent of Saint Vincent and the Grenadines and the Agent of Spain held in Hamburg on 13 January 2012, the President ascertained the views of the Parties regarding the conduct of the case and the organization of the hearing.

19. By letter dated 27 April 2012, Saint Vincent and the Grenadines requested the Tribunal

to **conduct an inquiry and obtain relevant evidence** under Articles 81 and 82 [of the Rules of the Tribunal] which would include:

- (1) The *Auto de Procesamiento del Juzgado de [Instrucción] No. 4* de Cadiz, 27 October 2010, including but not limited to, the authenticity and actual date of authorship of the document and the reason the document was hidden from the public until December 2010 in Hamburg. [...]
- (2) The Report of 29 July 2010. [...]
- (3) Relevant Communications between representatives of the Kingdom of Spain and the *Juzgado de [Instrucción] No. 4* de Cadiz.

20. In a letter dated 19 June 2012, Saint Vincent and the Grenadines submitted additional information relating to this request. By letters dated 10 May and 20 June 2012, the Agent of Spain raised objections to the request of 27 April 2012.

21. By letter dated 15 May 2012, the Registrar informed the Parties that the matter would be placed before the Tribunal prior to the hearing. By a further letter dated 4 September 2012, the Registrar informed the Parties that the President was of the view that, since the issues raised could be the subject of further information and argument during the hearing, the Tribunal would take a decision on this matter, if appropriate, after having heard the Parties.

22. By Order dated 4 July 2012, after having ascertained the views of the Parties, the President fixed 4 October 2012 as the date for the opening of the hearing. On 4 July 2012, the Registrar transmitted a copy of the Order to each Party.

23. During telephone consultations with the Co-Agents of Saint Vincent and the Grenadines and the Agent of Spain held on 11 September 2012, the President ascertained the views of the Parties regarding the organization of the hearing.

24. The Co-Agent of Saint Vincent and the Grenadines and the Agent of Spain submitted the materials required under paragraph 14 of the Guidelines Concerning the Preparation and Presentation of Cases before the Tribunal, on 28 September 2012 and 1 October 2012, respectively.

25. Prior to the opening of the oral proceedings, in accordance with article 68 of the Rules, the Tribunal held initial deliberations on 1 and 2 October 2012.

26. By letter dated 26 September 2012, pursuant to article 71 of the Rules, the Co-Agent of Saint Vincent and the Grenadines requested that Saint Vincent and the Grenadines be allowed to submit additional documents. On the same date, pursuant to article 71, paragraph 4, of the Rules, the Registrar invited the Agent of Spain to communicate the views of Spain on the request made by Saint Vincent and the Grenadines. By letter dated 28 September 2012, the Agent of Spain objected to the said request. Subsequently, in a letter dated 3 October 2012, the request was amended by the Co-Agent of Saint Vincent and the Grenadines. A copy of this letter was transmitted to the Agent of Spain. In an electronic communication dated 3 October 2012, the Agent of Spain maintained the objection of Spain regarding the production of additional documents.

27. Pursuant to the initial deliberations of the Tribunal held on 2 October 2012 and after having ascertained the views of the Parties during consultations held prior to the hearing on 4 October 2012, the President informed the Parties that only two of the documents referred to in the request (i.e., one photograph of the M/V “Louisa” and the English translation of Judgment No. 147 of 24 May 2010 from the *Juzgado de Instrucción No. 4 de Algeciras* (Court of Criminal Investigation No. 4 of Algeciras)) would be accepted by the Tribunal pursuant to article 71, paragraph 2, of the Rules.

28. By letter dated 2 October 2012, the Registrar communicated to the Parties a list of questions which the Tribunal wished the Parties specially to address in accordance with article 76, paragraph 1, of the Rules. The questions were as follows:

To the Applicant:

1. What is the legal justification for Saint Vincent and the Grenadines to request the release of the vessel *Gemini III* not flying its flag?

To the Respondent:

2. Are there any provisions in Spanish law that have a bearing on the compensation for financial losses suffered by the owner of a detained vessel, because of lengthy detention of the vessel which may not necessarily result in liability for the ship owner?
3. Would it be possible to clarify the timing and the purpose of the order that the Court of Cádiz issued on 29 July 2010 indicating to the owner of the *M/V Louisa* three options concerning the fate of the vessel: to maintain the vessel by the owner, to designate a depository or to auction it, having in mind that the vessel was detained at Puerto de Santa María since 1 February 2006?

To both Parties:

4. Is the Spanish criminal legislation applicable in the present case in conformity with the provisions of the United Nations Convention on the Law of the Sea including article 303 thereof or other rules of international law, including in particular the UNESCO Convention of 2 November 2001 on the Protection of the Underwater Cultural Heritage?
5. What are the provisions of the applicable Spanish law that govern boarding and search of a foreign vessel in the Spanish internal waters and whether they have been complied with in this particular case? Are there any international obligations which the Kingdom of Spain is required to follow in this regard?
6. How is the owner of a foreign-flag ship supposed to fulfil the international requirements for seaworthiness while the ship is detained in a port in the course of criminal proceedings without access to it being granted?

The Parties addressed these questions in the course of the hearing. In addition, the Co-Agent of Saint Vincent and the Grenadines provided written responses to the questions by letter dated 11 October 2012.

29. From 4 to 12 October 2012, the Tribunal held 13 public sittings. At these sittings the Tribunal was addressed by the following:

For Saint Vincent and the Grenadines:

Ms Rochelle A. Forde,
Mr S. Cass Weiland,
as Co-Agents, Counsel and Advocates,

Mr William H. Weiland,
as Counsel and Advocate,

Mr Myron H. Nordquist,
as Advocate.

For Spain:

Ms Concepción Escobar Hernández,
as Agent, Counsel and Advocate,

Mr Mariano J. Aznar Gómez,
Mr Carlos Jiménez Piernas,
as Counsel and Advocates.

30. At public sittings held on 4, 5 and 6 October 2012, the following witnesses and experts were called by Saint Vincent and the Grenadines:

Ms Alba Avella, witness
(examined by Mr S. Cass Weiland, cross-examined by Ms Escobar Hernández);

Mr Mario Avella, independent contractor of Sage/representative of Sage in Spain, witness
(examined by Mr S. Cass Weiland, cross-examined by Mr Aznar Gómez and Ms Escobar Hernández, re-examined by Mr S. Cass Weiland);

Mr Wesley Mark McAfee, oil and gas consultant, expert
(examined by Mr S. Cass Weiland, cross-examined by Mr Aznar Gómez,
re-examined by Mr S. Cass Weiland);

Mr Frederick Palmer Mesch III, public accountant and tax lawyer, expert
(examined by Ms Forde, cross-examined by Mr Aznar Gómez and Ms Escobar
Hernández).

31. At public sittings held on 8, 9 and 10 October 2012, the following experts were called by Spain:

Ms Carmen Martínez de Azagra Garde, Adviser to the Office of the Secretary of State for Energy at the Ministry of Industry, Energy and Tourism, Spain
(examined by Ms Escobar Hernández, cross-examined by Mr S. Cass Weiland,
re-examined by Ms Escobar Hernández);

Mr Dorrik Stow, Head of the Institute of Petroleum Engineering at Heriot-Watt University, Edinburgh, United Kingdom
(examined by Mr Aznar Gómez, cross-examined by Mr S. Cass Weiland, re-examined by Mr Aznar Gómez);

Mr James Preston Delgado, Director of Maritime Heritage in the Office of National Marine Sanctuaries in the National Oceanic and Atmospheric Administration, Department of Commerce, United States of America
(examined by Mr Aznar Gómez, cross-examined by Mr S. Cass Weiland, re-examined by Ms Escobar Hernández);

Mr José Antonio Martín Pallín, former prosecutor in the Public Prosecutor's Office and former judge of the Spanish Supreme Court (examined by Ms Escobar Hernández, cross-examined by Mr S. Cass Weiland, re-examined by Ms Escobar Hernández).

In the course of their testimonies, Mr McAfee and Mr Pallín responded to questions put to them by Judge Cot and Judge Lucky, respectively, in accordance with article 76, paragraph 3, of the Rules. Ms Martínez de Azagra Garde and Mr Pallín gave evidence in Spanish, and were examined and re-examined by Ms Escobar

Hernández, in the same language. Pursuant to article 85 of the Rules, the necessary arrangements were made for the statements of those experts as well as for the questions posed by Ms Escobar Hernández to be interpreted into the official languages of the Tribunal.

32. In the course of the oral proceedings, the Parties displayed a number of exhibits on screen, including photographs, maps, and excerpts of documents.

33. The hearing was broadcast on the internet as a webcast.

34. Pursuant to article 67, paragraph 2, of the Rules, copies of the pleadings and documents annexed thereto were made accessible to the public on the date of the opening of the oral proceedings. In accordance with article 86, paragraph 1, of the Rules, the transcript of the verbatim records of each public sitting was prepared by the Registry in the official languages of the Tribunal used during the hearing. In accordance with article 86, paragraph 4, of the Rules, copies of the transcripts of the said records were circulated to the judges sitting in the case, and to the Parties. The transcripts were also made available to the public in electronic form.

35. In the course of the hearing, on 10 October 2012, the President held consultations with the Co-Agent of Saint Vincent and the Grenadines and the Agent of Spain in order to ascertain the views of the Parties on procedural matters.

36. By letter dated 11 October 2012, the Registrar communicated to the Parties an additional list of questions which the Tribunal wished the Parties specially to address in accordance with article 76, paragraph 1, of the Rules. The questions were as follows:

1. Under what permit was the Louisa authorized to conduct activities in the internal waters and the territorial sea of Spain? In this respect was the permit contained in Annex 6 to the Memorial of the Applicant preceded or followed by other permits and what were the expiry dates of each permit? Is it possible to receive copies of the other permits?
2. Under what permit was the Gemini III authorized to conduct activities in the internal waters and the territorial sea of Spain? In this respect was the permit contained in Annex 6 to the Memorial of the Applicant preceded or followed by other permits and what were the expiry dates of each permit? Is it possible to receive copies of the other permits?

3. Under the permit, was any report on the result of the activities communicated to the Spanish authorities and, if so, is it possible to receive a copy thereof?

4. What were the terms of the contract concluded between the company Sage and the company Tupet? Is it possible to receive a copy of the contract?

5. What were the terms of the contract concluded with the company Plangas regarding the use of the *Gemini III*? Is it possible to receive a copy of the contract?

6. Under Spanish law, what would be the further legal proceedings which would have to be pursued/instituted, if any, in the present case in order to exhaust the local remedies in accordance with international law?

37. Saint Vincent and the Grenadines and Spain addressed these questions by two separate letters dated 17 and 18 October 2012, respectively.

II. Submissions of the Parties

38. In its Application, Saint Vincent and the Grenadines requested the Tribunal to adjudge and declare that:

1. Respondent has violated Articles 73, 87, 226, 245 and 303 of the Convention;

2. Applicant is entitled to damages as proven in the case on the merits, but not less than \$10,000,000 (USD); and

3. Applicant is entitled to all attorneys' fees, costs, and incidental expenses incurred.

39. In its Memorial, Saint Vincent and the Grenadines

requested the Tribunal, in paragraph 2, to:

(a) declare that the Memorial is admissible, that the allegations of the Applicant are well-founded, and that the Respondent has breached its obligations under the United Nations Convention on the Law of the Sea ("Convention");

- (b) order the Respondent to return the vessel *Louisa* and its tender, the *Gemini III*;
- (c) order the return of scientific research data and property held since 2006;
- (d) order the Respondent to pay direct damages for its improper and illegal actions in the amount of \$5,000,000 (USD);
- (e) order the Respondent to pay consequential damages for its improper and illegal actions in the amount of \$25,000,000 (USD); and
- (f) order the Respondent pay the costs incurred by the Applicant in connection with this Request, including but not limited to Agents' fees, attorneys' fees, experts' fees, transportation, lodging, and subsistence.

requested the Tribunal, in paragraph 86, to:

- (a) declare that the Request is admissible;
- (b) declare that the Respondent has violated Articles 73, 87, 226, 245 and 303 of the Convention;
- (c) order the Respondent to release the *MV Louisa* and *Gemini III* and return property seized;
- (d) declare that the detention of any crew member was unlawful;
- (e) order reparations in the amount of \$30,000,000 (USD); and
- (f) award reasonable attorneys' fees and costs associated with this request as established before the Tribunal.

40. In its Reply, Saint Vincent and the Grenadines made the following submissions on page 30:

[...] Saint Vincent and the Grenadines urges the Tribunal to accept jurisdiction, to find violations of Articles 73, 87, 226, 227, 245, and 304, and to award damages, legal fees, and costs as requested.

41. In its Counter-Memorial, Spain made the following submissions in paragraph 191:

[...] Spain respectfully asks the Tribunal to reject the requests made in paragraphs 2 and 86 of the Applicant's Memorial. Spain therefore asks the Tribunal to make the following orders:

- (5) to declare that this honourable Tribunal has no jurisdiction in the case;
- (6) subsidiarily, to declare that the Applicant's contention that Spain has breached its obligations under the Convention is not well-founded;
- (7) consequently, to reject each and all of the requests made by the Applicant; and
- (8) to order the Applicant to pay the costs incurred by the Respondent in connection with this case, including but not limited to Agents' fees, attorneys' fees, experts' fees, transportation, lodging, and subsistence.

42. In its Rejoinder, Spain made the following submissions in paragraph 61:

Spain respectfully asks the Tribunal to declare that it has no jurisdiction in this case; subsidiarily, Spain asks the Tribunal to declare that the Applicant's contention that Spain has breached its obligations under the Convention is manifestly unfounded. In consequence, Spain asks the Tribunal to reject each and all of the petitions made by Saint Vincent and the Grenadines, and moreover to oblige the latter to pay all the costs incurred by Spain in connection with this case.

43. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the Parties at the conclusion of the last statement made by each Party at the hearing:

On behalf of Saint Vincent and the Grenadines:

The Applicant requests the Tribunal to prescribe the following measures:

- (a) declare that the Tribunal has jurisdiction over the Request;
- (b) declare that the Request is admissible;
- (c) declare that the Respondent has violated Articles 73 (2) and (4), 87, 226, 227, 300, and 303 of the Convention;
- (d) order the Respondent to release the *Gemini III* and return property seized;
- (e) declare that the boarding and detention of the *MV Louisa* and *Gemini III* was unlawful;
- (f) declare that the detention of Mario Avella, Alba Avella, Geller Sandor and Szusky Zsolt was unlawful and abused their human rights in violation of the Convention;
- (g) declare that the Respondent denied justice to Mario Avella, Alba Avella, Geller Sandor, Szusky Zsolt and John B. Foster and abused the property rights of John B. Foster;
- (h) order that the Respondent is prohibited from retaliating against the interests of Mario Avella, Alba Avella, Geller Sandor, Szusky Zsolt, John B. Foster and Sage Maritime Scientific Research, Inc., including the initiation of any procedure requesting the arrest, detention, or prosecution of these individuals or the seizure or forfeiture of their property in domestic Spanish courts;
- (i) order that Respondent is prohibited from undertaking any action against the interests of Mario Avella and John B. Foster, including the continued prosecution of these individuals in domestic Spanish courts;
- (j) order reparations to individuals in the following amounts, plus interest at the lawful rate;

- (1) Mario Avella: € 810,000
- (2) Alba Avella: € 275,000
- (3) Geller Sandor: € 275,000
- (4) Szuszký Zsolt: € 275,000
- (5) John B. Foster: € 1,000

(k) order reparations to Sage Maritime Scientific Research, Inc. in the amount of \$4,755,144 (USD) for damages and an additional amount in the range of \$3,500,000 – \$40,000,000 (USD) for lost business opportunities;

(l) order reparations to Saint Vincent and the Grenadines in the amount of € 500,000 for costs and damages to its dignity, integrity, and vessel registration business; and

(m) award reasonable attorneys' fees and costs associated with this request as established before the Tribunal, of not less than € 500,000.

On behalf of Spain:

On the grounds set out in the written pleadings and then elaborated in the course of its oral statements, and on any other grounds, the Kingdom of Spain requests the International Tribunal for the Law of the Sea to adjudge and declare that:

1. the Application submitted by Saint Vincent and the Grenadines is not admissible and must be dismissed;
2. this honourable Tribunal has no jurisdiction in the case;
3. subsidiarily, the Applicant's contention that Spain has breached its obligations under the Convention is not well-founded;
4. consequently, each and all of the requests made by the Applicant must be rejected; and
5. the Applicant be ordered to pay the costs incurred by the Respondent in connection with this case, as determined by the Tribunal, but in an amount no less than US\$ 500,000.

III. Factual background

44. The M/V "Louisa" is a vessel flying the flag of Saint Vincent and the Grenadines. When the vessel was detained on 1 February 2006, it was being operated by Sage Maritime Scientific Research Inc. The owner of the vessel is Sage Maritime Partners Ltd., an affiliate of Sage Maritime Scientific Research Inc. Both these corporations were registered in the State of Texas (United States of America).

45. The M/V "Louisa" arrived in the port of Cadiz (Spain) on 20 August 2004. From the time of its arrival in Cadiz until October 2004, the M/V "Louisa" conducted operations in the territorial sea and the internal waters of Spain.

46. According to Saint Vincent and the Grenadines, the M/V "Louisa" conducted surveys of the sea floor with a view to locating oil and gas deposits, on the basis of a permit issued on 5 April 2004 by the Spanish Ministry of the Environment to the company Tupet Sociedad de Pesquisa Marítima S.A., a partner of Sage Maritime Scientific Research Inc. It states that this company had requested a permit for "an echo-mapping and video-photo study in the waters of Andalusia and Galicia". It adds that the permit authorizes "the extraction of samples from the seabed in order to carry out an Environmental Impact Report on the seabed", during a period of twelve months.

47. According to information provided on 17 October 2012 by Saint Vincent and the Grenadines in response to questions put to the Parties by the Tribunal on 11 October 2012, the relationship between Sage Maritime Scientific Research Inc., and Tupet Sociedad de Pesquisa Marítima S.A. was governed by an "Agreement for the Exploration and Study of Marine Geological Formations" dated 9 June 2004. Article I, section 1.01., of the said agreement, in its relevant part, provided:

Sage and the Contractors agree to conduct marine research and exploration for the purpose of studying marine geological formations.

(i) The Contractors agree to work exclusively with Sage to study various geological formations found in marine topography.

(ii) If by happenstance, during the course of marine research and exploration, the Contractors and Sage discover historical artifacts, sunken vessels, or any other lost items of value, Contractors and Sage agree to pursue acquisition of those items or payment for the intrinsic value of those items under the law of the sovereign owner.

(iii) If Contractors and Sage discover by happenstance a shipwrecked vessel, the Parties agree to salvage that vessel and any other shipwrecked vessel discovered while conducting that salvage according to the law of the sovereign owner of said vessel(s). Contractors agree that no other contracts, agreements, understandings or negotiations have been made or will be made with any other entity, individual or corporate, regarding salvage operations for these vessels. Contractors agree during the term of this Agreement not to acquire Finder's Rights or salvage permits for any vessels for any party other than Sage. During the term of the Agreement, Sage will have the "First Right of Refusal" to conduct any salvage mission for shipwrecked vessels, historical artifacts or any other items of value discovered by Contractors and Sage.
[...]

Section 1.03. of the agreement, in its relevant part, provided:

- (i) All actions taken by Contractors under this Agreement are taken as Independent Contractors and not as employees of Sage nor any affiliate of Sage. Contractors understand and agree that they will be fully responsible for all taxes of any character that may be levied upon Contractors by any jurisdiction.
- (ii) From the Effective Date of this contract, Sage agrees to pay in monthly installments: 3000 euros to Luis A. Valero de Barnabe Gonzalez, 2500 euros to Claudio Bonifacio, 1000 euros to each of two (2) assistants for duties performed under this contract. The Parties agree to an exchange rate of 1.3 US dollars to 1 euro. Sage will pay Contractors on the last business day of each month worked.

Section 1.04. of the agreement, in its relevant part, provided:

Division and Payment for Recovery. If in the course of routine marine exploration and study, Sage and Contractors discover by chance any shipwrecked vessel(s), historical artifacts, or any items of value, the Parties agree to the following terms and conditions regarding their division, valuation and proportionate compensation to all parties with interest:
[...]

- (viii) Sage and Contractors agree that all recovered items of value, including items of purported Roman or Phoenician origin or any other foreign origin, found and identified during a salvage operation, will be included in the total

assessed value for determination of the division of or payment for recovery. The recovered items shall include but not be limited to gold bars and discs, gold chains, two- four- and eight-escudo gold coins, silver bars, wedges or barretones, silverware and gilded silverware, one- two- four- and eight-real silver coins, navigational instruments, loose and set precious stones [...], jewelry [...], religious artifacts [...], bronze cannons, swords, muskets, daggers, and all other materials of value.

The Tribunal notes with regret that a copy of this agreement was not provided by the Applicant until after the request was made by the Tribunal.

48. From October 2004, the M/V "Louisa" was voluntarily docked at the port of El Puerto de Santa María (Spain) where, on 1 February 2006, it was boarded, searched and detained by Spanish authorities. According to the Spanish authorities, during the search of the vessel, "diverse pieces of undersea archaeological origin were found, as well as five assault rifles, considered weapons of war, and a handgun".

49. According to the Spanish authorities, the boarding and search of the M/V "Louisa" took place in connection with preliminary proceedings initiated by Order dated 30 November 2005 of the *Juzgado de Instrucción No. 4 de Cádiz* (Court of Criminal Investigation No. 4 of Cadiz).

50. According to Saint Vincent and the Grenadines, the boarding and search of the vessel took place without the permission of the captain of the M/V "Louisa", who was absent at that time, and without notice given to the consular authorities of Saint Vincent and the Grenadines.

51. In its Counter-Memorial, Spain states that its Embassy in Kingston, Jamaica, sent a note verbale on 15 March 2006 informing the Ministry of Foreign Affairs, Commerce and Trade of Saint Vincent and the Grenadines "of the entry into and search of the *Louisa* 'for any necessary procedures'".

52. The note verbale of 15 March 2006, in its relevant part, reads as follows:

The Embassy of Spain presents its compliments to the Ministry of Foreign Affairs, Commerce and Trade of St. Vincent and the Grenadines and has the honour to inform that on February 1 and 2, the N° 4 Court in Cadiz processed the entry and registration of the vessel *Louisa* flying the flag of Saint Vincent and the Grenadines.

The Embassy requests that this information be conveyed to the relevant authorities in St. Vincent and the Grenadines for any necessary procedures.

53. For its part, Saint Vincent and the Grenadines maintains that

[t]here is no evidence that this was ever properly communicated to Saint Vincent and the Grenadines. But if it was communicated, it completely failed to notify the flag country. [...] Applicant submits that these words do not communicate the boarding and search of a vessel flagged in a foreign jurisdiction.

54. As of the end of the hearing, the vessel remained under detention in connection with criminal proceedings initiated by the *Juzgado de Instrucción No. 4 de Cádiz*. According to the indictment (*Auto de Procesamiento*) issued by this court on 27 October 2010, pursuant to Spanish criminal law, the M/V "Louisa" was seized "due to its direct relationship as an instrument" for carrying out "the crime of possession and depositing of weapons of war [...] together with the continued crime of damaging Spanish historical patrimony".

55. On 1 February 2006, the Spanish authorities detained a second vessel, the "Gemini III". This vessel had been purchased in February 2005 by Sage Maritime Scientific Research Inc.

56. According to Saint Vincent and the Grenadines, during the first few months of 2005, the "Gemini III" conducted the operations previously performed by the M/V "Louisa". Saint Vincent and the Grenadines further states that all operations ceased in April 2005 and that the "Gemini III" was subsequently chartered, under a bare boat lease agreement dated 5 September 2005, by Sage Maritime Scientific Research Inc. to Plangas S.L., a company registered in Ciudad Real, Spain. It adds that the agreement was concluded with a view to leasing the "Gemini III" and the equipment required to carry out ancillary marine works for environmental projects.

57. According to Spain, by 15 December 2005, the "Gemini III" had come into dry dock in Puerto Sherry (Spain).

58. The "Gemini III", measuring 11.5 metres in length, was not registered in Saint Vincent and the Grenadines. Saint Vincent and the Grenadines indicates that the place of registration was either the United States of America or the Netherlands or that it was not registered in any State. It appears from the material submitted by the Parties that there is no certainty as to the place of registration of the "Gemini III".

59. On the day the M/V "Louisa" was detained, Spanish authorities also arrested three persons and took them into custody, namely Mr Geller Sandor and Mr Szuszy Zsolt, two crew members of Hungarian nationality, and Ms Alba Avella, a national of the United States and daughter of another member of the crew, Mr Mario Avella. According to her testimony, Ms Avella was not a member of the crew but was visiting her father as a tourist and was residing on the M/V "Louisa" during her stay in Spain.

60. During her testimony, Ms Avella stated that she had been detained in a prison cell which was a small room situated in the basement of a police station, with no chair, no place to sleep and no bathroom facility, and that she was presented to a judge five days after her arrest, on 6 February 2006. Ms Avella added that she and the two crew members of Hungarian nationality were released from custody on that day. According to Saint Vincent and the Grenadines, they were, however, unable to leave Spain as their passports were retained by the Spanish authorities for another eight months, during which each of them had to report regularly to the Spanish authorities. The information on record does not disclose that charges were ever brought against Ms Avella, Mr Sandor or Mr Zsolt.

61. Spain, however, contends that

the basic rights of Ms Avella, Mr Avella and the two members of the Hungarian crew have not been breached. They were detained in strict compliance with the law; they were informed of their rights; they were brought before a judge; they were heard by that judge; they were able to submit written statements, applications and appeals to defend their rights and interests.

62. Mr Avella, a national of the United States, was arrested in Portugal in May 2006, on the basis of a European Arrest Warrant. He was presented to a judge in Portugal before being handed over to Spanish authorities. Mr Avella was then kept under detention in Spain until February 2007. After his release from detention, his passport was retained by the Spanish authorities, to which he had to report regularly. Mr Avella was unable to leave Spain until he was issued a new passport by the United States Consulate in Barcelona in April 2008.

63. By Order dated 1 March 2010, the *Juzgado de Instrucción No. 4 de Cádiz* transformed the preliminary proceedings referred to in paragraph 49 relating to the "extraction in the year 2005 of diverse pieces of vessels belonging to the Spanish historic heritage which had sunk in Spanish waters off the coast of the Province of Cadiz" and an "offence of possession or storage of weapons of war" into a "*procedimiento sumario*". According to Spain, the *procedimiento sumario*, "– not being

a 'summary' procedure as might be inferred from its name – is the one with most legal safeguards and privileges for the accused".

64. According to the indictment issued on 27 October 2010 by the *Juzgado de Instrucción No. 4 de Cádiz*, Mr Avella was charged with "the crime of possession and depositing of weapons of war". Mr John Foster, a national of the United States, who, according to Saint Vincent and the Grenadines, is one of the "beneficial owners" of the M/V "Louisa", was also charged in the indictment with "the crime of possession and depositing of weapons of war [...] together with the continued crime of damaging Spanish historical patrimony".

65. An appeal against the indictment of 27 October 2010 was lodged "by the persons concerned" on 17 December 2010. By Order of 31 October 2011, the indictment was upheld. According to Spain, at the time of the hearing, an appeal against the said order was pending before the *Audiencia Provincial* of Cadiz.

66. On 10 June 2008, the investigating judge of the *Juzgado de Instrucción No. 4 de Cádiz* ordered Mr Foster to appear before him to give a statement. On 22 July 2008, the investigating judge rejected a petition from the lawyer of Sage to authorize Mr Foster to give his statement via video conference. Pursuant to an Order dated 12 July 2011 of a new investigating judge of the *Juzgado de Instrucción No. 4 de Cádiz*, Mr Foster, on 21 July 2011, "gave his statement via Skype transmission at the office of the Consulate General of Spain, in Houston, Texas".

67. According to the Memorial of Saint Vincent and the Grenadines submitted on 10 June 2011, "Sage has filed a motion in the Cadiz Court requesting the return of the computers confiscated by Respondent or copies of the hard drives of those computers". In its Memorial, Saint Vincent and the Grenadines also states that "[i]n 2011 the Court apparently ordered the Guardia Civil to turn over the equipment and information requested but to date the Guardia Civil has not complied with the Court's order".

68. In its Counter-Memorial filed on 12 December 2011, Spain maintains that "the return of a copy of the electronic data to Sage" was authorized on 12 July 2011, and that "the copy of the documents was delivered to the interested parties on 27 July and 2 August 2011."

69. According to Spain, at the closure of the oral proceedings, criminal proceedings before the Spanish courts were still pending.

IV. Jurisdiction

70. Both Saint Vincent and the Grenadines and Spain are States Parties to the Convention.

71. The Parties disagree as to whether the Tribunal has jurisdiction to entertain the case.

72. The relevant provisions on jurisdiction are articles 286, 287, paragraph 4, and 288, paragraph 1, of the Convention and article 21 of the Statute.

Article 286 of the Convention reads:

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

Article 287, paragraph 4, of the Convention reads:

If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

Article 288, paragraph 1, of the Convention reads:

A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.

Article 21 of the Statute reads:

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

73. In this context, it is also relevant to refer to article 288, paragraph 4, of the Convention, which reads:

In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

Scope of the declarations

74. Spain ratified the Convention on 15 January 1997 and made a declaration under article 287 of the Convention on 19 July 2002. The declaration, in its relevant part, states:

Pursuant to article 287, paragraph 1, the Government of Spain declares that it chooses the International Tribunal for the Law of the Sea and the International Court of Justice as means for the settlement of disputes concerning the interpretation or application of the Convention.

75. Saint Vincent and the Grenadines ratified the Convention on 1 October 1993 and made a declaration under article 287 of the Convention on 22 November 2010. The declaration states:

In accordance with Article 287, of the 1982 United Nations Convention on the Law of the Sea of 10 December 1982, I have the honour to inform you that the Government of Saint Vincent and the Grenadines declares that it chooses the International Tribunal for the Law of the Sea established in accordance with Annex VI, as the means of settlement of disputes concerning the arrest or detention of its vessels.

76. The Parties disagree on the scope of the jurisdiction conferred on the Tribunal by their declarations made under article 287.

77. Spain argues that, by virtue of reciprocity, the Tribunal would have jurisdiction only to the extent that the two declarations made under article 287 of the Convention cover identical legal ground. In this case, Spain argues that the jurisdiction of the Tribunal would be limited to disputes under the Convention concerning the arrest or detention of vessels, i.e., disputes falling under any provision of the Convention which expressly contains the term "arrest" or "detention" of vessels.

78. Saint Vincent and the Grenadines takes the position that the terms of its declaration do not limit the scope of the dispute and that it accepted the Tribunal as the means of settlement of disputes "concerning the arrest or detention of its vessels". It further argues that the expression "concerning" in its declaration clearly

indicates that its declaration extends to all articles of the Convention which have a bearing on the arrest or detention of its vessels. In particular, Saint Vincent and the Grenadines explicitly rejects any attempt to limit the scope of its declaration to disputes concerning only those provisions of the Convention that refer expressly to “arrest” or “detention” and argues that such an interpretation would have the effect of replacing its declaration under article 287 with one to the liking of Spain.

79. The Tribunal finds it appropriate to underline that the Convention does not preclude a declaration limited to a particular category of disputes or the possibility of making a declaration immediately before filing a case.

80. The Tribunal observes that some States Parties to the Convention have limited the scope of their declarations under article 287 of the Convention. This is also the well-established practice of States under article 36, paragraph 2, of the Statute of the International Court of Justice (hereinafter “the ICJ”).

81. In this connection, the Tribunal is of the view that, in cases where States Parties have made declarations of differing scope under article 287 of the Convention, its jurisdiction exists only to the extent to which the substance of the declarations of the two parties to a dispute coincides. As the ICJ stated in the case of *Certain Norwegian Loans*:

[S]ince two unilateral declarations are involved, such jurisdiction is conferred upon the Court only to the extent to which the Declarations coincide in conferring it. A comparison between the two Declarations shows that the French Declaration accepts the Court’s jurisdiction within narrower limits than the Norwegian Declaration; consequently, the common will of the Parties, which is the basis of the Court’s jurisdiction, exists within these narrower limits indicated by the French reservation.

(*Certain Norwegian Loans, Judgment, I.C.J. Reports 1957*, p. 9, at p. 23; see also *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 6, at p. 39, para. 88)

82. Jurisdiction is conferred on the Tribunal only insofar as the dispute is covered by the more limited declaration. This makes it necessary for the Tribunal to interpret the declaration of Saint Vincent and the Grenadines, which is more limited than that of Spain. In doing so, the Tribunal deems it appropriate to emphasize

that a declaration made under article 287 of the Convention is a unilateral act of a State. Accordingly, in interpreting such a declaration, particular emphasis should be placed on the intention of the State having made it.

83. The question to be answered is whether the wording of the declaration of Saint Vincent and the Grenadines refers only to the provisions of the Convention which explicitly contain the term “arrest” or “detention”. It is appropriate to underline that the declaration of Saint Vincent and the Grenadines refers to disputes “concerning the arrest or detention” of vessels. In the view of the Tribunal, the use of the term “concerning” in the declaration indicates that the declaration does not extend only to articles which expressly contain the word “arrest” or “detention” but to any provision of the Convention having a bearing on the arrest or detention of vessels. This interpretation is reinforced by taking into account the intention of Saint Vincent and the Grenadines at the time it made the declaration, as evidenced by the submissions made in the Application. From these submissions, it becomes clear that the declaration of Saint Vincent and the Grenadines was meant to cover all claims connected with the arrest or detention of its vessels. On the basis of the foregoing, the Tribunal concludes that the narrow interpretation of the declaration of Saint Vincent and the Grenadines as advanced by Spain is not tenable.

84. The Tribunal therefore considers that the declaration of Saint Vincent and the Grenadines covers the arrest or detention of its vessels and all matters connected therewith.

85. The next question to be answered relates to the meaning of the expression “its vessels” in the declaration of Saint Vincent and the Grenadines. The M/V “Louisa” was registered in Saint Vincent and the Grenadines and therefore is to be regarded as one of “its vessels” within the meaning of the declaration.

86. Saint Vincent and the Grenadines argues that, while the “Gemini III” was not flying the flag of Saint Vincent and the Grenadines, it served as a tender for the M/V “Louisa” and was thus “inextricably linked” to it. It further points out that a vessel “inextricably linked” to another vessel is not required to have a flag of its own.

87. Even if this view is to be accepted, the Tribunal considers that the “Gemini III” worked independently of the M/V “Louisa”. The “Gemini III” operated in conjunction with the M/V “Louisa” only from the time it was purchased by Sage Maritime Scientific Research Inc. in February 2005 until the termination of the activities of both vessels in April 2005. The “Gemini III” was subsequently chartered by its owner to another company and operated independently of the M/V “Louisa”.

The "Gemini III" thus enjoys an identity of its own. Consequently, it is not covered by the declaration of Saint Vincent and the Grenadines. The Tribunal therefore concludes that in respect of the "Gemini III" it lacks jurisdiction.

Prima facie jurisdiction and jurisdiction on the merits

88. Before proceeding to the question of the subject and existence of the dispute, the Tribunal finds it necessary to deal with the disagreement between the Parties on the effect that the Tribunal's decision on *prima facie* jurisdiction in its Order of 23 December 2010 would have on the question of jurisdiction to deal with the merits of the case.

89. Saint Vincent and the Grenadines argues that the reasoning of the Tribunal in the Order referred to above, in which the Tribunal held that it had *prima facie* jurisdiction, offers "ample support" in favour of the jurisdiction of the Tribunal to deal with the merits of this case.

90. Spain argues that the jurisdiction of the Tribunal on the merits of the case cannot be linked to its decision on *prima facie* jurisdiction to deal with provisional measures.

91. The Tribunal notes that the relevant part of its Order reads as follows:

Considering that, at this stage of the proceedings, the Tribunal does not need to establish definitively the existence of the rights claimed by Saint Vincent and the Grenadines, and that, in its Order of 11 March 1998 on provisional measures in the *M/V "SAIGA" (No. 2) Case*, the Tribunal stated that "before prescribing provisional measures the Tribunal need not finally satisfy itself that it has jurisdiction on the merits of the case and yet it may not prescribe such measures unless the provisions invoked by the Applicant appear *prima facie* to afford a basis on which the jurisdiction of the Tribunal might be founded" (*M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24, at p. 37, para. 29)
(*M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010*, p. 58, at p. 69, para. 69)

92. The Tribunal wishes to state that the question of jurisdiction to deal with the merits of this case can be decided only after consideration of the written and oral proceedings and not on the basis of the decision it took on *prima facie* jurisdiction in connection with the Request for the prescription of provisional measures. As the Tribunal held in its Order:

Considering that the present Order in no way prejudices the question of the jurisdiction of the Tribunal to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves, and leaves unaffected the rights of Saint Vincent and the Grenadines and Spain to submit arguments in respect of those questions (M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010, p. 58, at p. 70, para. 80; see also M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea), Order of 11 March 1998, ITLOS Reports 1998, p. 24, at p. 39, para. 46)

Subject and existence of the dispute

93. Although both Parties agree that the origin of this case lies in the detention of the M/V “Louisa” and its crew, they disagree on the question whether a dispute concerning the interpretation or application of the Convention exists.

94. Attention is drawn in this connection to article 24, paragraph 1, of the Statute and article 54, paragraphs 1 and 2, of the Rules.

Article 24, paragraph 1, of the Statute reads:

Disputes are submitted to the Tribunal, as the case may be, either by notification of a special agreement or by written application, addressed to the Registrar. In either case, the subject of the dispute and the parties shall be indicated.

Article 54, paragraphs 1 and 2, of the Rules read:

1. When proceedings before the Tribunal are instituted by means of an application, the application shall indicate the party making it, the party against which the claim is brought and the subject of the dispute.
2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Tribunal is said to be based; it shall also specify

the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based.

95. It is appropriate to refer in this connection to the established jurisprudence of the ICJ according to which “it is for the Applicant, in its Application, to present to the Court the dispute with which it wishes to seise the Court and to set out the claims which it is submitting to it” (*Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 1998, p. 432, at p. 447, para. 29).

96. The Tribunal notes that the case before it has two aspects: one involving the detention of the vessel and the persons connected therewith and the other concerning the treatment of these persons. The first aspect relates to the claim originally submitted by Saint Vincent and the Grenadines on the basis of articles 73, 87, 226, 227 and 303. The second aspect was introduced by Saint Vincent and the Grenadines on the basis of article 300 of the Convention only after the closure of the written proceedings. It was discussed during the oral proceedings and included in the final submissions of Saint Vincent and the Grenadines.

97. The Tribunal will deal with these two aspects successively.

98. Saint Vincent and the Grenadines argues that the detention of the M/V “Louisa” and of its crew constitutes breaches of articles 73, 87, 226, 227 and 303 of the Convention. Spain argues that the provisions of the Convention invoked by Saint Vincent and the Grenadines are plainly not applicable to the facts of this case and cannot serve as a legal basis for the claims of Saint Vincent and the Grenadines.

99. To enable the Tribunal to determine whether it has jurisdiction, it must establish a link between the facts advanced by Saint Vincent and the Grenadines and the provisions of the Convention referred to by it and show that such provisions can sustain the claim or claims submitted by Saint Vincent and the Grenadines. The ICJ, in the *Oil Platforms* case, stated:

[T]he Court cannot limit itself to noting that one of the Parties maintains that such a dispute exists, and the other denies it. It must ascertain whether the violations of the Treaty of 1955 pleaded by Iran do or do not fall within the provisions of the Treaty and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain, pursuant to Article XXI, paragraph 2.

(*Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Preliminary Objection, Judgment*, I.C.J. Reports 1996, p. 803, at p. 810, para. 16)

100. In respect of the alleged violation of article 73 of the Convention, Saint Vincent and the Grenadines argues that under paragraph 2 of this provision,

interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Article, that the Respondent was under an obligation to fix a reasonable bond or other security in respect of arrested vessels and their crew and to release the arrested vessels promptly upon the posting of that bond or security.

Saint Vincent and the Grenadines further states that

[w]hile Article 73 is located in Part V dealing with operation in the Exclusive Economic Zone, Saint Vincent and the Grenadines would highlight the intent of the article. It does not exist to supplant local laws and procedures, but it serves to protect the basic rights of foreign vessels and their crews.

101. Saint Vincent and the Grenadines also contends that Spain was required under article 73 of the Convention to notify Saint Vincent and the Grenadines, as the flag State, of the detention of the vessel.

102. Spain emphasizes that article 73 of the Convention solely relates to the exploration and exploitation of the fisheries resources in the exclusive economic zone. It maintains that the M/V "Louisa" never operated in this zone. Spain further points out that its Embassy in Kingston, Jamaica, by note verbale dated 15 March 2006, officially informed Saint Vincent and the Grenadines of "the entry into and search of the *Louisa*".

103. Article 73, paragraph 1, of the Convention reads:

The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

104. The Tribunal notes that the M/V "Louisa" was not detained for the reason that the laws and regulations of Spain concerning the living resources in the exclusive economic zone had been violated. The detention was made in the context of criminal proceedings relating to alleged violations of Spanish laws on "the protection of

the underwater cultural heritage and the possession and handling of weapons of war in Spanish territory.”

105. Accordingly, in the view of the Tribunal, article 73 of the Convention cannot serve as a basis for the claims submitted by Saint Vincent and the Grenadines in respect of the detention of the M/V “Louisa” and its crew.

106. Saint Vincent and the Grenadines argues that because of the detention of the M/V “Louisa” the vessel was denied access to the high seas and that this detention violates the freedom of vessels under the flag of Saint Vincent and the Grenadines to navigate on the high seas as provided for in article 87 of the Convention. It further argues that this freedom would mean very little if a port State were permitted to detain a foreign vessel for a long period of time for an alleged violation of the port State’s law.

107. In response, Spain points out that the detention did not take place on the high seas but while the M/V “Louisa” was docked voluntarily in a Spanish port. Spain argues that the interpretation given to article 87 by Saint Vincent and the Grenadines is not in conformity with the true meaning of this provision, which is a codification of the long-standing norm of “*mare apertum*”.

108. Spain adds that the M/V “Louisa” “cannot navigate, not only because of its current legitimate seizure [...] but also because it does not fulfil the international requirements for seaworthiness”. According to Spain, the certificates for the vessel under the SOLAS Convention and the MARPOL Convention had expired well before the detention of the M/V “Louisa” on 1 February 2006. Therefore, in the view of Spain, “the contention that Spain has violated Article 87 of the Convention by its seizure of the *Louisa* not only goes against the correct interpretation of this article [...] but also against logic and the facts surrounding the *Louisa*”. On the other hand, Saint Vincent and the Grenadines argues that the “lack of present seaworthiness [...] does not diminish Respondent’s liability for violating Article 87.”

109. The Tribunal notes that article 87 of the Convention deals with the freedom of the high seas, in particular the freedom of navigation, which applies to the high seas and, under article 58 of the Convention, to the exclusive economic zone. It is not disputed that the M/V “Louisa” was detained when it was docked in a Spanish port. Article 87 cannot be interpreted in such a way as to grant the M/V “Louisa” a right to leave the port and gain access to the high seas notwithstanding its detention in the context of legal proceedings against it. The Tribunal, therefore, concludes that the arguments advanced by Saint Vincent and the Grenadines

do not establish that article 87 of the Convention could constitute a basis for the claims submitted by Saint Vincent and the Grenadines in respect of the detention of the M/V “Louisa”.

110. In view of the above, the Tribunal does not consider it necessary to pronounce upon the arguments of the Parties related to the seaworthiness of the M/V “Louisa”.

111. Saint Vincent and the Grenadines also invokes articles 226 and 227 of the Convention as a basis for its claims. Article 226 of the Convention deals with the investigation of foreign vessels for violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment. Article 227 provides that States, “[i]n exercising their rights and performing their duties” under Part XII, “shall not discriminate . . . against vessels of any other State.” Acknowledging that the scope of the application of these provisions is confined to the marine environment, Saint Vincent and the Grenadines nevertheless holds that “[a]rticles 226 and 227 reflect values in international law that should be given consideration in this case, specifically freedom from undue seizure and inspection, and freedom from discrimination.”

112. In response, Spain underlines the limited scope of articles 226 and 227 and points out that they deal with the obligations of States, in particular those of coastal States, when taking recourse to enforcement actions based upon articles 216, 218 and 220 of the Convention. Spain further argues that the latter provisions are designed to address the competences of port States concerning the protection and preservation of the marine environment and that to broaden their scope of application, as indicated by Saint Vincent and the Grenadines, would not only be contrary to their very language but also to their object and purpose.

113. The Tribunal wishes to recall that the M/V “Louisa” was detained in the context of criminal proceedings relating to the alleged violations of Spanish laws on “the protection of the underwater cultural heritage and the possession and handling of weapons of war in Spanish territory.” Therefore, articles 226 and 227 of the Convention cannot serve as a basis for the claims submitted by Saint Vincent and the Grenadines in respect of the detention of the M/V “Louisa”.

114. Although Saint Vincent and the Grenadines did not include article 245 of the Convention in its final submissions, it invokes this provision as a basis for its claims in its written pleadings and argues that the owner of the M/V “Louisa” had obtained a permit pursuant to the applicable legislation to conduct research in the territorial sea of Spain “and thus had the express consent of the State to operate”

therein. It states that "[n]otwithstanding this, Respondent has seized vessels and scientific equipment and denied the Applicant the opportunity to pursue oil and gas opportunities".

115. Spain states that the M/V "Louisa" "was not seized because of the violation of the permits and the conditions established herein". It maintains that

[t]he *Louisa* was seized because it was used to manifestly violate Spanish legislation [...] with regard to the protection of the underwater cultural heritage and the possession and handling of weapons of war in Spanish territory.

116. Article 245 of the Convention reads:

Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State.

117. The Tribunal finds that the question of violation of the research permit does not arise since, as noted earlier, the M/V "Louisa" was detained in the context of criminal proceedings for alleged violations of Spanish laws on "the protection of the underwater cultural heritage and the possession and handling of weapons of war in Spanish territory." Accordingly, the Tribunal is of the view that article 245 of the Convention cannot serve as a basis for the claim submitted by Saint Vincent and the Grenadines that the detention of the M/V "Louisa" violated its right to conduct marine scientific research.

118. While in its Memorial and final submissions Saint Vincent and the Grenadines invoked article 303 of the Convention as a basis for a breach of the Convention, in its Reply it stated that

[t]he reference to article 303 in Paragraph 86 of the Memorial appears to be a typographical error in that Saint Vincent and the Grenadines is not claiming a substantive right under Article 303. Rather, this part of the Memorial should have referenced Article 304 which provides that Respondent's liability and responsibility to pay reparations to Applicant is not exclusively determined by provisions in the Convention, but is also found under jurisprudence of international law.

119. The Tribunal notes that, while article 303 of the Convention was invoked in the final submissions made by Saint Vincent and the Grenadines, this provision refers to the duties and rights of the coastal State to protect objects of an archaeological and historical nature found at sea. As stated by Saint Vincent and the Grenadines in its Reply, it is not relevant to the present case.

120. Although there was no reference to article 304 of the Convention in the final submissions of Saint Vincent and the Grenadines, it is relevant to note that Saint Vincent and the Grenadines nevertheless deals with this provision in the Reply, as quoted in paragraph 118 above.

121. Article 304 of the Convention reads:

The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

122. The Tribunal considers that the question of the application of article 304 of the Convention may arise only if the Tribunal were to hold that it has jurisdiction to deal with the merits of the case.

123. Saint Vincent and the Grenadines argues that the boarding of the M/V "Louisa" without the prior permission of its captain or of the Consul of Saint Vincent and the Grenadines constitutes not only a violation of general international law but also a violation of article 561 of the Code of Criminal Procedure of Spain.

124. Spain denies that such obligation exists under general international law. While acknowledging that its Code of Criminal Procedure requires prior permission of the captain of a vessel for boarding, it maintains that, pursuant to the interpretation given to the said provision by its national courts,

[a] number of exceptions have been made [...] in order to prosecute certain types of criminal activity, such as drug trafficking and terrorism, and also when it is necessary to board a vessel for humanitarian reasons or because of crimes committed on board.

125. The Tribunal notes that there is no provision in the Convention which requires a port State to notify the flag State or to obtain the authorization of the flag State or of the master of a foreign vessel operated for commercial purposes such as

the M/V "Louisa" before boarding and searching such a vessel docked at its port. Further, it is not incumbent upon the Tribunal to determine whether Spain has violated article 561 of its Code of Criminal Procedure by boarding the M/V "Louisa" without authorization. The Tribunal considers that the arguments advanced by Saint Vincent and the Grenadines in this regard have no bearing on the question of its jurisdiction.

126. The Tribunal will now proceed to deal with the arguments concerning the applicability of article 300 of the Convention to the facts and circumstances of this case.

127. After the closure of the written proceedings in the case, Saint Vincent and the Grenadines, in a letter dated 25 September 2012 addressed to the Registrar, stated that its advocate

will address certain jurisdictional issues, including but not limited to human rights violations committed by the Respondent and its representatives in Cadiz and elsewhere. He will relate these violations to, *inter alia*, basic precepts of international law and Article 300 of the Convention.

128. In response to this, Spain, in a letter dated 28 September 2012 addressed to the Registrar, stated that:

Spain would like to draw the attention of the Tribunal to the circumstance that the Applicant has never mentioned article 300 of the United Nations Convention on the Law of the Sea in its Memorial nor in its Reply, nor has it made any reasoning based on the relation among article 300 and possible violations of human rights by Spain in this case.

[...] Those are therefore new arguments that have never before been made public by Saint Vincent and the Grenadines during the written proceedings. The incorporation of these arguments to the oral proceedings would mean the introduction of arguments which were not known by the Defendant and against which Spain was not able to defend herself during the written proceedings.

[...] This behaviour is against the principle of "equal arms" (*égalité des armes*) which governs every contradictory proceedings and therefore contravenes the most basic principles of due process central to all proceedings before any international tribunal this honourable Tribunal included.

In consequence, Spain is equally opposed to this new argument which, seemingly, Saint Vincent and the Grenadines is trying to advance, in an unexpected and untimely manner, in order to be able to use it during the hearings on the merits of this case.

129. In the course of the oral proceedings, Saint Vincent and the Grenadines maintained that article 300 of the Convention “can be independently deployed”, that “a genuine dispute exists between the Parties over article 300 that in and of itself confers jurisdiction, on the merits, for this Tribunal, in this case” and that none can “deny the legitimacy of international law treaty obligations dealing with abuse of rights and, in the instant case, abuse with respect to both human and property rights.”

130. While expanding the reasoning for its argument, Saint Vincent and the Grenadines contends that the jurisdiction of the Tribunal based on article 300 of the Convention follows from article 288, paragraph 1, of the Convention dealing with “Jurisdiction”. In this respect, it states:

Some might argue that article 300 opens the door to a form of judicial legislation. Truthfully, there is a degree of merit to that argument as, while unmistakably incorporating the abuse of rights doctrine into the law that this Tribunal must consider, little further guidance is given in the Convention. The Applicant respectfully submits that this does not mean that article 300 is devoid of meaning and can be discarded.

[...]

The article can be accurately characterized as inviting a broad interpretation and a liberal application. While the determinations are up to this Tribunal, the Applicant urges the Tribunal to accept the responsibilities entailed in article 300, since they are plainly delegated by the State Parties to the Convention. We believe that the Tribunal can and ought to rise to the challenge of the progressive development of international law delegated to it in article 300 and apply the abuse of rights doctrine, which is well rooted in international law, to the particular facts in the *Louisa* case. We reiterate that the Tribunal has the authority, and indeed in the Applicant’s view the obligation expressly provided in article 300 of the Convention, to interpret as well as apply the international law doctrine on abuse of rights to the particular facts in the *Louisa* case.

131. Saint Vincent and the Grenadines states that “the framers of the Convention deliberately made article 300 an overarching part of the Convention precisely because they wisely concluded that all factual and legal circumstances could not

be predicted and covered by explicit rules", that "article 300 fills a gap by authorizing this Tribunal to find justice in cases of abuse", and that article 300 empowers the Tribunal with "residual authority to hear about instances of injustice and to provide remedies where merited". It further states that, in light of article 300, "abuse of human rights, including [...] property rights, is a legitimate and necessary source of law for this Tribunal to examine."

132. Saint Vincent and the Grenadines contends that the doctrine of abuse of rights is closely related to the principles of good faith and due process, and that this abuse occurred "when local authorities in Spain exercised their legal rights or authority in a manner that benefits from this exercise were unjustly disproportionate, to the detriment of Alba Avella, two Hungarian crewmen, Mario Avella, and John Foster as well as to Saint Vincent and the Grenadines as a sovereign."

133. Saint Vincent and the Grenadines also maintains that Spain cannot object to article 300 of the Convention being invoked by it, since the latter expressly cited article 300 in paragraph 75 of its Response to the Request of Saint Vincent and the Grenadines for the prescription of provisional measures and in the context of the doctrine of abuse of legal process, referred to in article 294 of the Convention, as stated in paragraphs 186 to 190 of its Counter-Memorial. Saint Vincent and the Grenadines adds that Spain is, therefore, "estopped from asserting with any credibility that article 300 of the Convention is not relevant to this case".

134. Spain argues that the interpretation of article 300 of the Convention as advanced by Saint Vincent and the Grenadines is untenable, that an abuse of rights may be invoked only in respect of the manner of the exercise of the rights, jurisdiction and freedoms "recognized" in the Convention, and that it is only when such rights, jurisdiction and freedoms are abused that article 300 may be applicable.

135. In response to the argument of Saint Vincent and the Grenadines that Spain is estopped from challenging its right to invoke article 300 of the Convention, Spain points out that it has no objection to the application of article 300, which "is a clear expression of the good faith principle". Spain, however, maintains that article 300 "is applicable to each and every one of the provisions contained in the Convention", and that Saint Vincent and the Grenadines "has not succeeded in identifying any such provisions" of the Convention. Spain further maintains that it does not believe that article 300 has a "life of its own" and that it has not relied upon article 300 independently of the other provisions of the Convention.

136. Article 300 of the Convention reads:

States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

137. The Tribunal finds that it is apparent from the language of article 300 of the Convention that article 300 cannot be invoked on its own. It becomes relevant only when “the rights, jurisdiction and freedoms recognised” in the Convention are exercised in an abusive manner.

138. Before examining whether article 300 of the Convention applies to this case, the Tribunal wishes to examine the argument advanced by Spain that Saint Vincent and the Grenadines is trying to change the nature of the dispute into one quite different from that set out in its Application. Spain contends that Saint Vincent and the Grenadines presented this argument “perhaps because it has come to the conclusion that its reference to articles 73, 87, 226, 227, and 245 of the Convention had no legal basis”. Spain further states that any such change is incompatible with the rules of adversarial procedure and the principle of “equality of arms” which, it maintains, must be respected in proceedings before the Tribunal.

139. Spain adds that Saint Vincent and the Grenadines has tried to introduce article 300 of the Convention as a “new title of jurisdiction” in respect of an “alleged breach of human rights, the rights of individuals arrested and the property rights of the owner of the *Louisa*” and that it, thereby, has tried to “change the nature of the dispute” and present a “new case”.

140. Spain further argues that the introduction during the oral proceedings of new arguments regarding the alleged breaches of human rights deprived Spain of the possibility of preparing its defence, as required by the principle of “equality of arms”. Spain states:

But let us return to the substance of the case, the alleged breaches of human rights, in all the guises in which they have been raised by the Applicant. This serious accusation only came to light during the oral hearings . . . I cannot fail to point out that the introduction of these new arguments at the oral stage of the proceedings deprived Spain of the possibility of preparing its defence, as required by the principle of equality of arms. [. . .]

[...] the Applicant... has drastically modified its position during this oral phase, ditching all the Convention articles that were invoked at the written stage and forgetting all the arguments that it put forward.

141. The Tribunal observes that both the Application and the Memorial focus on alleged violations by Spain of articles 73, 87, 226, 245 and 303 of the Convention and reparations arising therefrom. These two documents do not refer to article 300 of the Convention and its applicability to the facts of this case. After the closure of the written proceedings, Saint Vincent and the Grenadines presented its claim as one substantively based on article 300 and the alleged violations of human rights by Spain.

142. The Tribunal considers that this reliance on article 300 of the Convention generated a new claim in comparison to the claims presented in the Application; it is not included in the original claim. The Tribunal further observes that it is a legal requirement that any new claim to be admitted must arise directly out of the application or be implicit in it (see *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 240, at p. 266, para. 67).

143. In this context, the Tribunal wishes to draw attention to article 24, paragraph 1, of its Statute. As noted earlier, this provision states, *inter alia*, that when disputes are submitted to the Tribunal, the "subject of the dispute" must be indicated. Similarly, by virtue of article 54, paragraph 1, of the Rules, the application instituting the proceedings must indicate the "subject of the dispute". It follows from the above that, while the subsequent pleadings may elucidate the terms of the application, they must not go beyond the limits of the claim as set out in the application. In short, the dispute brought before the Tribunal by an application cannot be transformed into another dispute which is different in character.

144. The Tribunal may also refer in this connection to the jurisprudence of the Permanent Court of International Justice and the ICJ in interpreting the corresponding provisions in their Statutes and Rules.

145. The Permanent Court of International Justice stated:

[U]nder Article 40 of the Statute, it is the Application which sets out the subject of the dispute, and the Case, though it may elucidate the terms of the Application, must not go beyond the limits of the claim as set out therein.

(*Prince von Pless Administration, Order of 4 February 1933, P.C.I.J., Series A/B, No. 52, p. 11, at p. 14*)

It added in the case concerning the *Société commerciale de Belgique*:

[T]he liberty accorded to the parties to amend their submissions up to the end of the oral proceedings must be construed reasonably and without infringing the terms of Article 40 of the Statute and Article 32, paragraph 2, of the [1936] Rules which provide that the Application must indicate the subject of the dispute. (*Société commerciale de Belgique, Judgment, 1939, P.C.I.J., Series A/B, No. 78, p. 160, at p. 173*)

146. The ICJ confirmed this jurisprudence in the case concerning *Certain Phosphate Lands in Nauru* and in the *Oil Platforms* case. In the latter case, the ICJ stated that:

It is well established in the Court's jurisprudence that the parties to a case cannot in the course of proceedings "transform the dispute brought before the Court into a dispute that would be of a different nature" (*Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 265, para. 63*). (*Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003, p. 161, at p. 213, para. 117*)

147. There are no special circumstances in this case to warrant a departure from this jurisprudence.

148. In interpreting article 24, paragraph 1, of its Statute and article 54, paragraphs 1 and 2, of its Rules, the Tribunal concludes that these provisions are essential from the point of view of legal security and the good administration of justice (see also *Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 240, at p. 267, para. 69*).

149. For all these reasons, the Tribunal considers that it cannot allow a dispute brought before it by an Application to be transformed in the course of proceedings into another dispute which is different in character.

150. The Tribunal therefore is of the view that article 300 of the Convention cannot serve as a basis for the claims submitted by Saint Vincent and the Grenadines.

151. For the foregoing reasons, the Tribunal concludes that no dispute concerning the interpretation or application of the Convention existed between the Parties at the time of the filing of the Application and that, therefore, it has no jurisdiction *ratione materiae* to entertain the present case.

152. In view of this finding, the Tribunal is not required to deal with the contention of Spain that Saint Vincent and the Grenadines has failed to satisfy the obligation under article 283 of the Convention to exchange views and that this has precluded its access to the Tribunal.

153. Since it has no jurisdiction to entertain the Application, the Tribunal is not required to consider any of the other objections raised to its jurisdiction or against the admissibility of the claims of Saint Vincent and the Grenadines.

154. While the Tribunal has concluded that it has no jurisdiction in the present case, it cannot but take note of the issues of human rights as described in paragraphs 59, 60, 61 and 62.

155. The Tribunal holds the view that States are required to fulfil their obligations under international law, in particular human rights law, and that considerations of due process of law must be applied in all circumstances (see “*Juno Trader*” (*Saint Vincent and the Grenadines v. Guinea-Bissau*), *Prompt Release, Judgment, ITLOS Reports 2004*, p. 17, at pp. 38-39, para. 77; “*Tomimaru*” (*Japan v. Russian Federation*), *Prompt Release, Judgment, ITLOS Reports 2005–2007*, p. 74, at p. 96, para. 76).

V. Costs

156. In its final submissions, Saint Vincent and the Grenadines requests the Tribunal to “award reasonable attorneys’ fees and costs associated with this request, as established before the Tribunal, of not less than €500,000”. For its part, Spain, in its final submissions, requests that “the Applicant be ordered to pay the costs incurred by the Respondent in connection with this case, as determined by the Tribunal, but in an amount no less than US\$500,000”.

157. During the proceedings relating to the request for the prescription of provisional measures, each party requested the Tribunal to award costs in its favour for expenses incurred in connection with that phase of the proceedings. In the Order of 23 December 2010, the Tribunal decided to reserve “for consideration in its final decision the submissions made by both parties for costs in the present proceedings”.

158. The rule in respect of costs in proceedings before the Tribunal, as set out in article 34 of its Statute, is that each party bears its own costs, unless the Tribunal decides otherwise.

159. In the present case, the Tribunal sees no need to depart from the general rule that each party shall bear its own costs with respect to both the provisional measures phase and the merits phase of the present proceedings.

VI. Operative provisions

160. For these reasons,

THE TRIBUNAL,

(1) By 19 votes to 2,

Finds that it has no jurisdiction to entertain the Application filed by Saint Vincent and the Grenadines on 24 November 2010.

FOR: *President* YANAI; *Vice-President* HOFFMANN; *Judges* MAROTTA RANGEL, NELSON, CHANDRASEKHARA RAO, AKL, WOLFRUM, NDIAYE, COT, PAWLAK, TÜRK, KATEKA, GAO, BOUGUETAIA, GOLITSYN, PAIK, KELLY, ATTARD, KULYK;

AGAINST: *Judges* JESUS, LUCKY.

(2) Unanimously,

Decides that each Party shall bear its own costs.

Done in English and in French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this twenty-eighth day of May, two thousand and thirteen, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Saint Vincent and the Grenadines and the Government of Spain, respectively.

(*signed*) Shunji YANAI,
President

(*signed*) Philippe GAUTIER,
Registrar

Judge PAIK, availing himself of the right conferred on him by article 125, paragraph 2, of the Rules of the Tribunal, appends his declaration to the Judgment of the Tribunal.

(initialled) J.-H.P.

Judge NDIAYE, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(initialled) T.M.N.

Judge COT, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(initialled) J.-P.C

Judge KATEKA, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(initialled) J.L.K.

Judge BOUGUETAIA, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Tribunal.

(initialled) B.B.

Judge JESUS, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his dissenting opinion to the Judgment of the Tribunal.

(initialled) J.L.J.

Judge LUCKY, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his dissenting opinion to the Judgment of the Tribunal.

(initialled) A.A.L.